

UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO

In Re:

INTERNATIONAL HOME PRODUCTS, INC.

Debtor

FISRTBANK-PUERTO RICO, INC.,

Plaintiff,

v.

ANDREW BERT FOTI, spouse EVA JUDITH
PAGÁN BURGOS and the FOTI-PAGÁN
CONJUGAL PARTNERSHIP,

Defendants.

Case No. 12-02997 (ESL)

Chapter 11

Adv. Proc.No. 12-279

(Removal of San Juan Superior Court
Action, Civil Case No. KAC2012-
0444 and KAC 2012-0446)

**JOINT MOTION FOR ENTRY OF PARTIAL JUDGMENT BY STIPULATION CONCERNING
REMOVED CIVIL CASE NO. KAC2012-0444**

TO THE HONORABLE BANKRUPTCY COURT:

COME NOW First Bank-Puerto Rico (the “Bank”) and Andrew Bert Foti, his spouse, Eva Judith Pagán Burgos, and the Foti-Pagán Conjugal Partnership (the “Fotis”), through their undersigned counsels, and respectfully request this Court to approve the following terms to a Partial Judgment by Stipulation:

1. The Bank is a financial institution organized pursuant to the laws of Puerto Rico with principal offices at 1519 Ponce de León Ave., San Juan, PR 00908-0146. The Fotis are residents of Puerto Rico.
2. On December 3, 2009, the Fotis and the Bank executed a Loan Agreement

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(the "Loan Agreement") pursuant to which the Bank extended the Fotis a credit facility of \$1,710,000 (the "Loan").

3. On the same date, the parties also executed a Pledge Agreement (the "Pledge Agreement") whereby the Defendants granted to the Bank a pledge and security interest over a mortgage note in the amount of \$1,910,000. The mortgage note is secured by two mortgages; one in the aggregate principal amount of \$720,000 and the other in the aggregate principal amount of \$1,910,000.

4. On May 1, 2012, the Bank filed a complaint for breach of contract, collection of monies and foreclosure of real estate against the Fotis before the Court of First Instance of the Commonwealth of Puerto Rico, Superior Court of San Juan, Civil Case No. KAC2012-0444 (the "State Court Action"), which was removed to the U.S. Bankruptcy Court for the District of Puerto Rico through the above captioned case together with the complaint entitled FirstBank-Puerto Rico, Inc., v. Health Distillers International, Inc.; Andrew Bert Foti, spouse Eva Judith Pagán Burgos and the Foti-Pagán Conjugal Partnership; and the Estate of Andrew Anthony Foti, Civil No. KAC2012-4446 (the "Pending State Court Action").

5. As of December 4, 2012, the Fotis owe the Bank a total of \$1,702,701.17 under the Loan.

6. Notwithstanding the above, the parties have agreed to settle all the controversies arising in the State Court Action.

7. Thus, the parties executed a Stipulation on December 4, 2012, attached hereto as Exhibit 1 (the "Stipulation"), wherein the parties have agreed to the following

TERMS AND CONDITIONS:

a. The Bank and the Fotis agree to restructure the Loan as follows:

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- i. The repayment of the Loan shall be made in monthly installments of principal and interest amounting to \$8,260.18, based on a 25-year amortization with a balloon payment in two years (2/25), at an interest rate of 3.5% per annum;
 - ii. The Fotis agree to pay the Bank the amount of \$50,000, which will be applied to the principal of the Loan;¹
 - iii. The Fotis agree to pay the Bank all the monthly installments, interest and penalties past due under the Loan, which is in the amount of \$134,402.99;² and
 - iv. The Fotis agree to sign the documents to amend the Loan Agreement pursuant to the terms and conditions of the original Loan, except as provided herein.³
- b. The agreement between the parties to resolve the controversies object of the State Court Action is subject to the execution of the corresponding loan documents.
 - c. Nothing contained in the Stipulation shall be construed as an agreement for the resolution of the controversies between the parties in relation to the loans or sums claimed in the Pending State Court Action.
 - d. The parties state for the record that the Stipulation contains the following errors:

¹ The Fotis paid the Bank the initial amount of \$25,000 on December 4, 2012, and the remaining \$25,000 on December 14, 2012.

² Due to an error on part of the Bank, the Fotis paid part of the aforesaid amount to the Bank on December 14, 2012. The remaining balance was paid on March 7, 2013.

³ The First Amendment to Loan Agreement and Allonge were signed by the Bank and the Fotis on March 7, 2013.

- i. The Stipulation does not state the date when it was executed, but the parties hereby confirm that it was executed on December 4, 2012.
- ii. The Stipulation misstates the number of the case in paragraph (b) and (b)(6) as being DCD 2012-1270, when it should be the number of the State Court Action, removed to this Court under the instant case.

8. Rule 41 of the Federal Rules of Civil Procedure (“Rule 41”)⁴ governs the dismissal of actions. Specifically, Rule 41 provides the following as to the voluntary dismissal of complaints by plaintiffs:

Without a Court Order. Subject to Rules 23(e), 23.1(c), and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

- (i) ...
- (ii) a **stipulation of dismissal** signed by all parties who have appeared.

Fed. R. Civ. P. Rule 41(a)(1)(A)(ii) (Emphasis added).

9. As a result of the foregoing, the parties respectfully request the Court to issue a Partial Judgment by Stipulation in the State Court Action incorporating the terms set forth in the Stipulation, as stated above.

10. The parties further agree that the Partial Judgment by Stipulation will become firm, final and unappealable as of the date of its entry, provided that it will not be

⁴ The dismissal of adversary proceedings is governed by Rule 7041 of the Federal Rules of Bankruptcy Procedure, which states that Rule 41 of the Federal Rules of Civil Procedure applies in adversary proceedings. Fed. R. Bank. P. 7041.

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executable as long as the Fotis are in compliance with the Stipulation and Loan Agreement. Upon any default by the Fotis of the terms and conditions of the Stipulation or Loan Agreement, the Bank may, at its option, request the Court to order the execution of the Partial Judgment by Stipulation without further demand or notice to the Fotis.

WHEREFORE the parties request that the Court enter Partial Judgment by Stipulation as to the removed Civil Case No. KAC2012-0444, filed against the Fotis, pursuant to the abovementioned terms and conditions.

RESPECTFULLY SUBMITTED.

NOTICE ON TIME TO RESPOND

Within fourteen (14) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

In San Juan, Puerto Rico, today April 8, 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will notify all parties registered through their attorneys of record.

In San Juan, Puerto Rico, today April 8, 2013.

s/LINETTE FIGUEROA-TORRES
LINETTE FIGUEROA-TORRES
USDC-PR No. 227,104
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STIPULATION

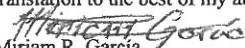
Firstbank de Puerto Rico (hereinafter, "Firstbank" or the "plaintiff"), BMF, Inc. (hereinafter, "BMF"), and Andrew Bert Foti, Eva Pagán and their community property partnership (hereinafter, the "guarantors" or the "defendants"), through the undersigned legal counsel, hereby respectfully agree to the following:

1. The parties have agreed to settle some of the controversies in several of the cases between them.

2. To such effect, they have reached certain agreements:

a. In the bankruptcy case of BMF, Inc., Case No. 12-00658 (BKT), the parties have agreed that (1) Firstbank shall withdraw its objection to confirming the Confirmation Plan; (2) the money owed by BMF, Inc., to Firstbank and guaranteed by the defendants shall be repaid in monthly installments of \$13,242.00, based on a 20-year amortization and a balloon payment on the fifth year (5/20), at an interest rate of 5.25% per annum; (3) on the fifth year, together with the balloon payment, BMF shall pay the totality of the interest and penalties in arrears upon signing the amended loan agreement (as of today, they amount to approximately \$326,740.30); (4) the guarantors shall provide the following additional securities to Firstbank: (i) Dorado Reef, E-64, Dorado, PR (second mortgage

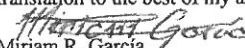
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Miriam R. Garcia
US Court Certified Translator/ Interpreter
Certificate No. 03-051

for \$500,000.00), (ii) Mansiones de Garden Hills, Apt. 16-G, 16th Floor, South Building, Guaynabo, PR (first mortgage for \$180,000), and (iii) property in Bay View Reserve, 7550 Hinson St. Apt. 10 B, Orlando, FL (first mortgage for \$530,000.00); (5) the properties to be pledged as security shall be free of all liens and encumbrances, except for the Dorado Reef property, which has a first mortgage in favor of Banco Popular de Puerto Rico for approximately \$600,000.00; (6) BMF and the guarantors shall execute the documents to modify the loans and ratify the personal securities within the following ~~15~~ days [hw: 30 days] [four sets of illegible initials] and other existing collateral; and (7) the parties shall file a stipulation in case K AC2012-0444 and in Adversary Proceeding No. 12-0279.

b. In addition, Firstbank and the defendants agree to restructure Bert Foti's personal loan, which is one of the loans subject-matter of lawsuit DCD2012-1270, as follows: (1) the repayment shall be made in monthly installments of principal and interest amounting to \$8,260.18, based on a 25-year amortization with a balloon payment in two years (2/25), at an interest rate of 3.5% per annum; (2) the defendants agree to pay \$50,000 to the principal of the loan in question; (3) the defendants agree to pay all the monthly installments, interest and penalties in arrears that amount to approximately \$120,000.00; (4) the defendants agree to make the payments as follows: \$25,000 on December 4th and the rest within 10 calendar

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Miriam R. Garcia
US Court Certified Translator/ Interpreter
Certificate No. 03-051

days; (5) the plaintiffs agree to sign the documents to modify the loan with conditions similar to those of the original loan, except as provided in this document, within 30 days; and (6) the parties shall file a stipulated judgment in case DCD2012-1270 and a stipulated partial judgment in Adversary Proceeding 12-0279.

c. Furthermore, in consideration of Andrew Bert Foti's consent to the aforementioned terms and conditions, Firstbank agrees to request a sixty (60) day stay of the proceedings in Adversary case 12-0279.

d. This is an agreement between the parties to resolve the controversies mentioned herein subject to the execution of the final stipulation and loan documents.

e. Nothing contained in this stipulation shall be construed as an admission of guilt by any of the parties. Nor shall it be construed as a stipulation for the resolution of the controversies between the parties in relation to the loans or sums claimed in case In re: International Home Products, Inc., Bkrptcy Case No. 12-02997 (ESL).

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By [illegible signature]
Rafael A. González Valiente
P.R. Bar Association No. 17,601

[hw:
Paid: \$ 25,000 Ck. 2650
Bank of America]

[hw:
Received
(illegible initials)
FIRSTBANK
12-4-12]

I hereby certify that this is a true and accurate translation to the best of my abilities.

Miriam R. Garcia
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By [illegible signature]
Francisco Pascual
On behalf of Firstbank de Puerto Rico

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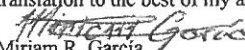
[illegible signature]
LUIS FRANCISCO COLÓN CONDE
USDC NO. 213805 and P.R. Supreme Court Attorney
Registry No. 12,164
[illegible signature] [hw: (BMF)]

By [illegible signature]
Andrew Bert Foti
On his own behalf and on behalf of
the community property partnership

By [illegible signature]
Andrew Bert Foti
On behalf of BMF, Inc.

[T.N.: All four (4) pages of this document bear four sets of illegible initials on the left margin.]

I hereby certify that this is a true and accurate translation to the best of my abilities.


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